

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

IN RE RED HAT, INC. SECURITIES LITIGATION

)  
)  
) Master File  
) No. 5:04-CV-473-BR  
)

THIS DOCUMENT RELATES TO:

ALL ACTIONS

)

ORDER

This matter is before the court on Lead Plaintiff's motion for final approval of settlement and for award of attorneys' fees and expenses. On 7 December 2010, this court conducted a final fairness hearing pursuant to Rule 23 of the Federal Rules of Civil Procedure. Considering the entire record of these proceedings, the court finds as follows:

1. Notice was provided in a reasonable manner to all class members in accordance with Fed. R. Civ. P. 23(c)(2)(B) and (e)(1) and due process of law.
2. The court has considered the one objection to the settlement, filed 8 October 2010 by Alva Y. Moore.
3. The court directs that any claim filed by Donald K. Reil (as referenced in his letter filed 22 November 2010) be included for processing as if timely filed.
4. The Class Action Fairness Act of 2005 ("CAFA") does not apply to this action, it having commenced in 2004 prior to CAFA's effective date. See Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 571 (2005) (recognizing that CAFA is not retroactive); 28 U.S.C. § 1332, Note ("The amendments made by this Act [enacting 28 U.S.C.A. § 1453 and chapter 114 of this title (28 U.S.C.A.

§§ 1711 to 1715), and amending this section and 28 U.S.C.A. §§ 1335, and 1603 of this title] shall apply to any civil action commenced on or after the date of enactment of this Act [Feb. 18, 2005].” (quoting Pub. L. 109-2) (alterations in original)).

5. Pursuant to Fed. R. Civ. P. 23(e)(2), the court finds that the settlement is fair, reasonable, and adequate, and thus the motion for final approval of the settlement is ALLOWED.
6. Except as otherwise set forth herein, the settlement as set forth in the Stipulation of Settlement (DE #208-1) and the allocation of settlement funds to authorized claimants as set forth in the Notice of Proposed Settlement of Class Action (DE #221-1, Ex. A) are hereby approved.
7. The class has received notice of the request for attorneys’ fees and expenses in accordance with Fed. R. Civ. P. 23(h)(1).
8. Having considered the factors set forth in Barber v. Kimbrell’s, Inc., 577 F.2d 216, 226 n.28 (4<sup>th</sup> Cir. 1978), the court ALLOWS the motion for attorneys’ fees and awards attorneys’ fees in the total amount of \$6,000,000. The court finds this amount to be reasonable in light of the complexity of the case, the history of the litigation, the results obtained, and percentage fee awards in other common benefit fund securities class actions.
9. The court will award expenses in a total amount to be determined subsequently, not to exceed \$350,000.
10. No interest is awarded on the amount of attorneys’ fees or expenses.

11. Lead Plaintiff Charles Gilbert is awarded \$15,000.
12. No attorneys' fees or expenses shall be disbursed until the motion referenced in ¶ 13 below is resolved and until further order of this court. Claims processing and disbursement to class members shall occur as expeditiously as possible without regard to the outstanding issue of the disbursement of attorneys' fees and expenses.
13. The motion of Saxena White P.A., Milberg LLP, and Edmisten & Webb Law Firm (collectively "movants") to participate in the fee and expense application will be held in abeyance. Lead Counsel and movants shall have until 14 January 2011<sup>1</sup> within which to resolve the motion without court intervention. On or before that date, those parties are directed to file notice informing the court whether the parties have resolved the issues raised in the motion. If not so resolved, the undersigned will refer the motion to Magistrate Judge David W. Daniel.

This 10 December 2010.



W. Earl Britt  
Senior U.S. District Judge

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<sup>1</sup>At the final fairness hearing, the court stated that the deadline would be 15 January. However, that day is a Saturday. Thus, the court sets the deadline for the closest business day, 14 January.